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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

7 JOLENE R. MEREDITH, o/b/o )  
8 D.H., a minor child, ) No. CV-09-0384-CI  
9 Plaintiff, )  
10 v. ) ORDER DENYING PLAINTIFF'S  
11 MICHAEL J. ASTRUE, ) MOTION FOR SUMMARY JUDGMENT  
12 Commissioner of Social ) AND GRANTING DEFENDANT'S  
13 Security, ) MOTION FOR SUMMARY JUDGMENT  
14 Defendant. )  
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16 BEFORE THE COURT are cross-Motions for Summary Judgment. (Ct.  
17 Rec. 13, 18.) Jolene Meredith, mother of minor child, D.H.,  
18 protectively filed for Supplemental Security Income (SSI) on behalf  
19 of D.H. Attorney Maureen J. Rosette represents the minor child  
20 (Plaintiff); Special Assistant United States Attorney Thomas M.  
21 Elsberry represents the Commissioner of Social Security (Defendant).  
22 The parties have consented to proceed before a magistrate judge.  
23 (Ct. Rec. 7.) After reviewing the transcript of proceedings and  
24 briefs filed by the parties, the court **DENIES** Plaintiff's Motion for  
Summary Judgment and directs entry for Defendant.

25 **JURISDICTION**

26 On January 16, 2007, Jolene Meredith protectively filed an  
27 application for Supplemental Security Income (SSI) benefits on  
28 behalf of Plaintiff alleging disability due to a learning disorder,

1 with an alleged onset date of September 1, 2006. (Tr. 13, 54, 99,  
2 101.) Plaintiff was a school age child at the time the application  
3 was filed. (Tr. 15.) The application was denied initially and on  
4 reconsideration. After an administrative hearing at which  
5 Plaintiff's mother and medical expert R. Thomas McKnight, Ph.D.,  
6 testified, the administrative law judge (ALJ), R. S. Chester, denied  
7 benefits on September 23, 2008. (Tr. 26-53, 12-24.) Plaintiff, who  
8 was present during the hearing, was represented by counsel. (Tr.  
9 28.) A review was requested, and the Appeals Council denied review  
10 on November 12, 2009. (Tr. 1-5, 13-24.) At that time, the ALJ's  
11 decision became the final decision of the Commissioner. This appeal  
12 followed pursuant to 42 U.S.C. § 405(g).

13 **SEQUENTIAL EVALUATION FOR CHILDREN**

14 On August 22, 1996, Congress passed the Personal Responsibility  
15 and Work Opportunity Reconciliation Act of 1996, Pub. L. 104-193,  
16 110 Stat. 105, which amended 42 U.S.C. § 1382c(a)(3). Under this  
17 law, a child under the age of eighteen is considered disabled for  
18 the purposes of SSI benefits if "that individual has a medically  
19 determinable physical or mental impairment, which results in marked  
20 and severe functional limitations, and which can be expected to  
21 result in death or which has lasted or can be expected to last for  
22 a continuous period of not less than 12 months." 42 U.S.C. §  
23 1382c(a)(3)(C)(I) (2003).

24 Social Security regulations (Regulations) provide a three-step  
25 process in determining whether a child is disabled. First, the ALJ  
26 must determine whether the child is engaged in substantial gainful  
27 activity. 20 C.F.R. § 416.924(a). If the child is not engaged in  
28 substantial gainful activity, then the analysis proceeds to step

1 two. Step two requires the ALJ to determine whether the child's  
2 impairment or combination of impairments is severe. *Id.* The child  
3 will not be found to have a severe impairment if it constitutes a  
4 "slight abnormality or combination of slight abnormalities that  
5 causes no more than minimal functional limitations." 20 C.F.R. §  
6 416.924(c) If, however, there is a finding of severe impairment,  
7 the analysis proceeds to the final step which requires the ALJ to  
8 determine whether the impairment or combination of impairments  
9 "meets, medically equals or functionally equals" the severity of a  
10 set of criteria for an impairment in the listings. 20 C.F.R. §  
11 416.924(d).

12 The Regulations explain that an impairment will be found to be  
13 functionally equivalent to a listed impairment if it results in  
14 extreme limitations in one area of functioning or marked limitations  
15 in two areas. 20 C.F.R. § 416.926a(a). To determine functional  
16 equivalence, the following six domains, or broad areas of  
17 functioning, are utilized: acquiring and using information,  
18 attending and completing tasks, interacting and relating with  
19 others, moving about and manipulating objects, caring for yourself,  
20 and health and physical well-being. 20 C.F.R. § 416.926a(b).  
21 Limitations in functioning must result from the child's medically  
22 determinable impairments. 20 C.F.R. § 416.924a(a).

23 **STANDARD OF REVIEW**

24 Congress has provided a limited scope of judicial review of the  
25 Commissioner's decision. 42 U.S.C. § 405(g). A court must uphold  
26 the Commissioner's decision, made through an ALJ, when the  
27 determination is not based on legal error and is supported by  
28 substantial evidence. *See Jones v. Heckler*, 760 F.2d 993, 995 (9<sup>th</sup>

1 Cir. 1985); *Tackett v. Apfel*, 180 F.3d 1094, 1097 (9<sup>th</sup> Cir. 1999).  
 2 "The [Commissioner's] determination that a plaintiff is not disabled  
 3 will be upheld if the findings of fact are supported by substantial  
 4 evidence." *Delgado v. Heckler*, 722 F.2d 570, 572 (9<sup>th</sup> Cir. 1983)  
 5 (citing 42 U.S.C. § 405(g)). Substantial evidence is more than a  
 6 mere scintilla, *Sorenson v. Weinberger*, 514 F.2d 1112, 1119 n.10 (9<sup>th</sup>  
 7 Cir. 1975), but less than a preponderance. *McAllister v. Sullivan*,  
 8 888 F.2d 599, 601-602 (9<sup>th</sup> Cir. 1989); *Desrosiers v. Secretary of*  
 9 *Health and Human Services*, 846 F.2d 573, 576 (9<sup>th</sup> Cir. 1988).  
 10 Substantial evidence "means such evidence as a reasonable mind might  
 11 accept as adequate to support a conclusion." *Richardson v. Perales*,  
 12 402 U.S. 389, 401 (1971) (citations omitted). "[S]uch inferences  
 13 and conclusions as the [Commissioner] may reasonably draw from the  
 14 evidence" will also be upheld. *Mark v. Celebreeze*, 348 F.2d 289,  
 15 293 (9<sup>th</sup> Cir. 1965). On review, the court considers the record as  
 16 a whole, not just the evidence supporting the decision of the  
 17 Commissioner. *Weetman v. Sullivan*, 877 F.2d 20, 22 (9<sup>th</sup> Cir. 1989).

18 It is the role of the trier of fact, not this court, to resolve  
 19 conflicts in evidence. *Richardson*, 402 U.S. at 400. If evidence  
 20 supports more than one rational interpretation, the court may not  
 21 substitute its judgment for that of the Commissioner. *Tackett*, 180  
 22 F.3d at 1097; *Allen v. Heckler*, 749 F.2d 577, 579 (9<sup>th</sup> Cir. 1984).  
 23 Nevertheless, a decision supported by substantial evidence will  
 24 still be set aside if the proper legal standards were not applied in  
 25 weighing the evidence and making the decision. *Brawner v. Secretary*  
 26 *of Health and Human Services*, 839 F.2d 432, 433 (9<sup>th</sup> Cir. 1987).  
 27 Thus, if there is substantial evidence to support the administrative  
 28 findings, or if there is conflicting evidence that will support a

1 finding of either disability or nondisability, the finding of the  
2 Commissioner is conclusive. *Sprague v. Bowen*, 812 F.2d 1226, 1229-  
3 1230 (9<sup>th</sup> Cir. 1987).

4 **STATEMENT OF FACTS**

5 Plaintiff was entering fourth grade at the time of the hearing.  
6 (Tr. 40.) He had attended elementary school in the Spokane School  
7 District, where he was in general education classrooms with one hour  
8 per day of special education services. (Tr. 41, 107.) In 2007, his  
9 special education case manager reported Plaintiff received  
10 additional assistance in the general education classroom but  
11 exhibited no behavior problems. (Tr. 114.) Plaintiff was one year  
12 behind in his reading and writing levels, and six months behind in  
13 math, but was considered pleasant, cooperative, and capable of work  
14 within a classroom setting at the school (*Id.*; Tr. 116, 149.)  
15 Plaintiff's third grade report card indicated he was doing  
16 satisfactory work in most subjects, but needed assistance in reading  
17 and writing, and some areas of math. (Tr. 132.) Plaintiff had not  
18 failed any grade levels.

19 At the hearing, Plaintiff's mother testified Plaintiff got  
20 along well with the other children at school, but had problems  
21 completing homework, staying focused on school work and household  
22 chores, and keeping himself clean. (Tr. 42-43, 44-46.) She  
23 reported he also complained of stomach problems at school and had  
24 missed several days at school due to stomach pain which she thought  
25 was related to stress after his grandfather's recent death. (Tr. 46-  
47.) She reported he was improving academically (Tr. 41), and had  
26 started counseling shortly after his grandfather died in February  
27 2007. (Tr. 48.)

**1 ADMINISTRATIVE DECISION**

2 ALJ Chester found Plaintiff was a school-age child at the time  
3 the application for benefits was filed and at the time of the  
4 hearing. (Tr. 15.) At step one, the ALJ found Plaintiff had not  
5 engaged in substantial gainful employment at any time relevant to  
6 the proceedings. (Tr. 16.) At step two, he found the child had the  
7 severe impairment of a learning disorder. (*Id.*) Plaintiff's  
8 reactive airway disease and ear infections were found to be not  
9 severe. (Tr. 17-18.) At step three, the ALJ determined Plaintiff  
10 did not have an impairment or combination of impairments that  
11 medically met or equaled a listed impairment in 20 C.F.R. Part 404,  
12 Subpart P, Appendix 1 (Listing), or functionally equaled a Listing,  
13 as defined in 20 C.F.R. §§ 416.924a(d), .926a. (Tr. 18.) Regarding  
14 the six domains of functioning assessed at step three, the ALJ  
15 determined Plaintiff did not have an "extreme" limitation in any  
16 domain of function, or "marked" limitations in any two domains.  
17 (Tr. 20-24.) The ALJ concluded Plaintiff's impairment did not  
18 functionally equal a Listing and, therefore, he was not disabled  
19 since the date the application was filed. (Tr. 24.)

**20 ISSUES**

21 The question presented is whether there is substantial evidence  
22 in the record to support the ALJ's decision denying benefits and, if  
23 so, whether that decision is based on proper legal standards.  
24 Plaintiff asserts the ALJ erred when: (1) he found the minor's  
25 impairment did not functionally equal a Listing; (2) he failed to  
26 give proper weight to the testimony of the mother and opinions from  
27 Plaintiff's teachers; and (3) he improperly relied on medical expert  
28 testimony that Plaintiff had "less than marked" limitations in the

1 domains of Acquiring and Learning Information and Attending to and  
2 Completing Tasks. (Ct. Rec. 14 at 4-5.)

### 3 DISCUSSION

#### 4 A. Evaluation of Child Disability Cases

5 Where a child's impairment does not meet or equal one of the  
6 Listings, his impairments are evaluated under a functional  
7 equivalency standard. 20 C.F.R. § 416.926a. The ALJ is responsible  
8 for deciding functional equivalence after consideration of all  
9 evidence submitted. 20 C.F.R. § 416.926a(n). The Regulations list  
10 the information and factors that will be considered in determining  
11 whether a child's impairment functionally equals a Listing. 20  
12 C.F.R. § 416.926a; 20 C.F.R. § 416.924a, .924b. Standardized  
13 testing provides important information about deficits in development  
14 and functioning in terms of standard deviations and percentiles. 20  
15 C.F.R. § 416.926a(e)(1)(ii), (e)(2)(iii). However, no single  
16 piece of evidence is considered in isolation. Test scores alone can  
17 not establish a "marked" or "extreme" limitation in a domain. 20  
18 C.F.R. §§ 416.924a(a)(1)(ii), .926a(e)(4). The Commissioner must  
19 consider test scores together with reports and observations of  
20 school personnel and others. 20 C.F.R. § 416.924a(a); 20 C.F.R.  
21 § 416.926a(e)(4)(ii). In assessing functional equivalence, the  
22 ALJ also considers how much extra help the child needs, how  
23 independent he is, how he functions in school, and the effects of  
24 treatment, if any. 20 C.F.R. § 416.926a(b). In evaluating this  
25 type of information, the ALJ will consider how the child performs  
26 activities as compared to other children his age who do not have  
27 impairments. 20 C.F.R. § 416.926a(b). This information comes from  
28 examining and non-examining medical sources as well as "other

1 sources," such as parents, teachers, case managers, therapists, and  
2 other non-medical sources who have regular contact with the child.  
3 See, e.g., 20 C.F.R. § 416.913 (c)(3),(d); *Social Security Ruling*  
4 (SSR) 98-1p, IV.B. (*Sources of Evidence*).

5 Citing *Social Security Ruling* 06-03p, Plaintiff argues the ALJ  
6 should have given more weight to the opinions and observations of  
7 Plaintiff's mother and school personnel, who completed a Teacher  
8 Questionnaire in 2007. He contends their non-medical opinions  
9 establish "marked" limitations in the domains of Acquiring and Using  
10 Information and Attending and Completing Tasks. (Ct. Rec. 20 at 9-  
11.) He further contends substantial evidence does not support the  
12 non-examining medical expert's opinion that Plaintiff's impairments  
13 are less than marked in these two domains. (*Id.* at 11.) For the  
14 reasons discussed *infra*, these arguments are not persuasive.

15 **B. Medical Expert Evaluation of the Case**

16 Where, as here, the record includes various reports from  
17 individual sources, the ALJ is required to consult with a "qualified  
18 specialist" to evaluate the case in its entirety. *Howard ex rel.*  
19 *Wolff v. Barnhart*, 341 F.3d 1006, 1014 (9<sup>th</sup> Cir. 2003) (citing 42  
20 U.S.C. 1382c(a)(3)(I))(reliance on an individual evaluation or  
21 report is inadequate to meet statutory requirement that a child's  
22 case be evaluated in its entirety). The analysis and opinion of a  
23 qualified psychologist selected by the ALJ assists the Commissioner  
24 in his mandated responsibility to evaluate a child disability case  
25 in its entirety. 20 C.F.R. § 416.927(d)(1). In this case, the  
26 evidence includes results from psychological and intellectual  
27 functioning tests, together with reports from school psychologists,  
28 teachers and special education specialists. Evaluation of the case

1 as a whole by a qualified medical expert is critical to the  
 2 adjudicator's longitudinal understanding of child's impairment and  
 3 resulting limitations. *See Howard*, 341 F.3d at 1014; *Andrews v.*  
 4 *Shalala*, 53 F.3d 1035, 1041 (9<sup>th</sup> Cir. 1995).

5 The ALJ properly obtained a comprehensive case evaluation from  
 6 Dr. McKnight, who has a Ph.D. in psychology, a M.Ed. in Education,  
 7 and a bachelor's degree in speech and special education. (Tr. 74.)  
 8 In addition, Dr. McKnight testified he is board certified in school  
 9 psychology with a specialty in the diagnosis and assessment of  
 10 mental disorders. (Tr. 34.) Dr. McKnight's credentials qualify him  
 11 as a specialist for purposes of the mandated case evaluation in a  
 12 child disability case. *Id.* Based on his review and interpretation  
 13 of the entire record, Dr. McKnight concluded Plaintiff did not  
 14 functionally meet a listing. (Tr. 36-39.) De novo review reveals  
 15 his testimony is supported by substantial evidence.

#### 16       **1. Acquiring and Using Information Domain**

17       As testified by Dr. McKnight, the child's scores the Stanford-  
 18 Binet Intelligence Scale-IV administered in May 2006 reflect no  
 19 deficit in overall intellectual functioning. (Tr. 145.) Scores on  
 20 the Wechsler's Individual Achievement Test-II showed limitations in  
 21 solving arithmetic problems, although Plaintiff demonstrated he  
 22 could understand the math reasoning. (Tr. 35, 146.) Dr. McKnight  
 23 reported scores from neither test were two standard deviations below  
 24 the mean. (Tr. 17, 35-36, 145.) As found by the ALJ in his  
 25 assessment of the six domains, and supported by Dr. McKnight's  
 26 testimony, the standardized test scores do not establish a "marked"  
 27 or "severe" limitation in the Acquiring and Using information  
 28 domain. (Tr. 17, 20, 35-36.) *See* 20 C.F.R. § 416.926a(e),(g)(iv).

1       In addition to test scores, the ALJ properly considered school  
2 reports that recommended Plaintiff receive special education  
3 services one hour a day to address his problems in the areas of  
4 reading, writing, and solving math problems, as well as progress  
5 reports and Individualized Educational Program (IEP) reports. (Tr.  
6 20; see, e.g., 146-52, 136-40.) The ALJ's summary of the evidence,  
7 Dr. McKnight's interpretation of the test scores, and reports from  
8 school personnel over the years support the ALJ's finding of "less  
9 than marked" limitations in the Acquiring and Using Information  
10 domain.

11       For example, in addition to the first grade testing, the record  
12 includes reports from second and third grade teachers. The  
13 longitudinal record shows that Plaintiff's special education case  
14 manager, Karen Wuesthoff, assessed five "serious problems" and one  
15 "very serious problem" in this domain in a March 2007 Teacher  
16 Questionnaire prepared for disability benefits purposes. (Tr. 108-  
17 09.) Plaintiff asserts these opinions, which were not rejected by  
18 the ALJ, are substantial evidence to support a finding of functional  
19 equivalence.

20       Plaintiff is correct that, in the evaluation of child  
21 disability cases, the opinions of a child's teachers are highly  
22 probative. As is the case with all "other source" or lay testimony,  
23 the educators' opinions must be considered and the weight given to  
24 them explained. *Stout v. Commissioner, Social Sec. Admin.*, 454 F.3d  
25 1050, 1053 (9<sup>th</sup> Cir. 2006). If their opinions are rejected, the ALJ  
26 must give specific "germane" reasons for doing so. *Id.* Further,  
27 the Commissioner advises in his policy ruling that the opinions  
28 "other sources" such as teachers, who have had extended contact with

1 a claimant, may be used to reject the opinions of a treating or  
2 examining medical source, if their opinions are supported by other  
3 medical evidence in the record. *Social Security Ruling (SSR) 06-*  
4 03p.

5 Although "other source" opinions may, under certain  
6 circumstances described in *SSR 06-03p*, be given more weight than a  
7 medical opinion, non-medical testimony can never establish a  
8 diagnosis or disability absent corroborating competent medical  
9 evidence. *Nguyen v. Chater*, 100 F.3d 1462, 1467 (9<sup>th</sup> Cir. 1996).  
10 Likewise, "other source" opinions alone are insufficient to  
11 establish functional equivalence, an administrative finding that is  
12 reserved to the Commissioner. 20 C.F.R. §§ 416.927, 416.926a (e);  
13 *Jamerson v. Chater*, 112 F.3d 1064, 1067 (9<sup>th</sup> Cir. 1997); *SSR 06-03p*.

14 Here, the ALJ properly considered the Teacher Questionnaire,  
15 noting that in the narrative portion of the Questionnaire, the  
16 teachers specifically commented Plaintiff was behind one year for  
17 reading and writing, and six months for math. Nonetheless, as found  
18 by the ALJ, they opined that, despite his problems, Plaintiff was  
19 "fully capable of functioning within a classroom setting and school  
20 environment." (Tr. 16, 114.)

21 By March 2008, Plaintiff's IEP reports indicated time devoted  
22 to special education services in the areas of reading and writing  
23 had not increased, and Plaintiff was requiring little, if any,  
24 classroom support for math. (Tr. 139-40.) Ms. Wuesthoff, who had  
25 followed Plaintiff from the time he was in first grade, noted in the  
26 2008 IEP that Plaintiff was "very capable" of doing classroom work;  
27 she indicated his problem in the area of writing was lack of effort.  
28 No behavior or health problems were noted. (Tr. 16, 136-39.)

1 Finally, Plaintiff's report card for the 2007-2008 school year  
2 indicates by the third trimester, Plaintiff was meeting or working  
3 towards his targets with assistance in the areas of reading,  
4 writing, and math. (Tr. 132.) He was not failing any subject. His  
5 third grade teacher noted "shows growth" and "satisfactory" effort  
6 in reading development. (*Id.*)

7 The longitudinal school records, including the numerical  
8 ratings in the Teacher's Questionnaire, are consistent with Dr.  
9 McKnight's interpretation of the standardized test results and his  
10 opinion that Plaintiff had problems in the Acquiring and Using  
11 Information domain, but they were "less than marked" limitations.  
12 The ALJ's finding of "less than marked" in this domain is supported  
13 by substantial evidence.

14 **2. Attending and Completing Tasks Domain**

15 Regarding limitations in Plaintiff's Attending and Completing  
16 Tasks domain, after summarizing the Regulations applicable to  
17 Plaintiff's age group, ALJ Chester found less than marked  
18 limitations based on Dr. McKnight's testimony, Plaintiff's mother's  
19 testimony, and the school records. (Tr. 21.) In support of his  
20 finding, the ALJ referenced Ms. Wuesthoff's comments in reports that  
21 Plaintiff "fully capable of functioning" in a classroom setting, was  
22 able to do the work but "lacked effort in writing," and was able to  
23 do classroom math "with little if any support." (*Id.*, Tr. 114, 139,  
24 140.) As discussed above, in 2007, Ms. Wuesthoff and Plaintiff's  
25 second grade teacher rated "obvious problems" in five activities,  
26 and one serious problem in "completing work accurately without  
27 careless mistakes" in the Attending and Completing Tasks domain.  
28 (Tr. 109.)

1       As is the case with the first domain findings, the longitudinal  
2 record reflects problems with effort and staying on task. However,  
3 it also shows improvement and satisfactory progress in the classroom  
4 setting. (See, e.g., Tr. 132.) As noted by the ALJ and Dr.  
5 McKnight, progressive improvement in his academics was noted in the  
6 2008 IEP, the level of special education support was not increased  
7 over the years, and his teacher reported he was fully capable of  
8 functioning with the classroom. (Tr. 21, 37, 109, 114, 139.)  
9 Plaintiff's school grades reflect satisfactory progress and his  
10 report card indicates satisfactory effort in multiple subjects.  
11 (Tr. 132.) The lack of failing grades or negative indicators in his  
12 third grade report card is inconsistent with a finding of  
13 disability. *Jamerson*, 112 F.3d at 1067. Plaintiff references no  
14 evidence from a medical source or school personnel to support a  
15 finding of marked limitations in the domain of Attending and  
16 Completing Tasks.

17 **C. Other Source Evidence**

18       The assertion that Plaintiff's mother's testimony is sufficient  
19 to support a finding of disability is without merit. The ALJ is  
20 required to "consider observations by non-medical sources as to how  
21 an impairment affects a claimant's ability to work." *Sprague*, 812  
22 F.2d at 1232. Moreover, an ALJ is obligated to give reasons  
23 "germane" to a lay witness's testimony before discounting it. *Stout*  
24 *v. Commissioner, Social Sec. Admin.*, 454 F.3d 1050, 1053 (9<sup>th</sup> Cir.  
25 2006). Although other source testimony may be used to show the  
26 severity of an impairment, it can never establish disability absent  
27 corroborating competent medical evidence. 20 C.F.R. § 416.913(a),  
28 (d) (4); *Nguyen*, 100 F.3d at 1467; *Vincent v. Heckler*, 739 F.2d 1393,

1 1395 (9<sup>th</sup> Cir. 1984).

2 After summarizing claimant's mother's testimony, the ALJ  
3 discounted her statements regarding the child's academic problems  
4 and limitations in personal hygiene, noting reports from school  
5 personnel or the child's treating physician do not support the  
6 degree of limitations alleged by claimant's mother. (Tr. 18-19.) He  
7 properly gave specific, germane reasons for rejecting the intensity  
8 and limiting effects allegedly caused by the child's impairments.

9 *Bruce v. Astrue*, 557 F.3d 1113, 1115 (9<sup>th</sup> Cir. 2009). For example,  
10 the ALJ found school records show Plaintiff was improving in  
11 reading, writing, and math and claimant's mother testified that the  
12 child was improving academically. (Tr. 19, 37, 41, 43.) School  
13 records discussed above show that the child was meeting academic and  
14 work habit targets in several other subjects are consistent with the  
15 ALJ's reasoning. Throughout the record, Plaintiff was observed as  
16 "pleasant and cooperative," trying his best, able to focus on tasks,  
17 capable of doing the work, and willing to ask for directions by test  
18 administrators and teachers. (Tr. 19, 132, 138-40, 149-50, 152.)  
19 Significantly, as noted by the ALJ, the records report no behavior  
20 problems that impacted Plaintiff's learning. (Tr. 19.)

21 Regarding health problems, the ALJ noted claimant's mother  
22 testified the child's stomach problems and absenteeism were related  
23 to stress and grief caused by the recent death of the child's  
24 grandfather. (Tr. 19, 46-48.) As reported by Ms. Meredith, the  
25 child had started counseling for these issues. (Tr. 48.) The ALJ  
26 properly considered claimant's mother's testimony in his evaluation  
27 of the case and gave legally sufficient reasons for discounting  
28 allegations that were inconsistent with other evidence in the record

1 and his determination of non-disability. (Tr. 19.)

2 **CONCLUSION**

3 Viewing the record in its entirety, Dr. McKnight's testimony is  
4 consistent with standardized testing results, school records, and  
5 observations by teachers. Because Dr. McKnight's opinions are  
6 supported by substantial evidence and based on an evaluation of the  
7 entire case, the ALJ did not err in his reliance on the medical  
8 expert's opinions. The ALJ did not err in his consideration and  
9 evaluation of other source testimony. The record reflects  
10 substantial evidence to support the Commissioner's finding that  
11 Plaintiff had not been disabled since the application date.  
12 Accordingly,

13 **IT IS ORDERED:**

14 1. Plaintiff's Motion for Summary Judgment (**Ct. Rec. 13**) is  
15 **DENIED**.

16 2. Defendant's Motion for Summary Judgment (**Ct. Rec. 18**) is  
17 **GRANTED**.

18 The District Court Executive is directed to file this Order and  
19 provide a copy to counsel for Plaintiff and Defendant. The file  
20 shall be **CLOSED** and judgment entered for **DEFENDANT**.

21 DATED April 5, 2011.

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S/ CYNTHIA IMBROGNO  
24 UNITED STATES MAGISTRATE JUDGE  
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